

**Introduced by Senator Hall
(Coauthor: Senator De León)**

February 19, 2016

An act to add and repeal Section 25513 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1426, as introduced, Hall. Alcoholic beverage control: tied-house restrictions: compensation.

Existing law generally restricts certain alcoholic beverage licensees from paying, crediting, or compensating a retailer for advertising in connection with the advertising and sale of alcoholic beverages and expressly authorizes exceptions to this prohibition.

This bill would authorize, until January 1, 2022, a person, as defined, who has an ownership interest in a retail license, to be compensated by an authorized licensee, as defined, for promotional or marketing services of the authorized licensee's products subject to the specified conditions, including that the compensation be based solely on the promotional and marketing activities. The bill would also make an authorized licensee who, through coercion or other illegal means, induces the holder of a wholesaler's license to provide compensation pursuant to these provisions guilty of a misdemeanor. The bill would additionally make an authorized licensee or a person who violates these provisions guilty of a misdemeanor.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25513 is added to the Business and
2 Professions Code, to read:
3 25513. (a) For purposes of this section:
4 (1) "Authorized licensee" means a manufacturer, winegrower,
5 manufacturer's agent, rectifier, California winegrower's agent,
6 beer manufacturer, holder of an out-of-state beer manufacturer's
7 certificate, distilled spirits manufacturer, distilled spirits rectifier,
8 distilled spirits manufacturer's agent, or craft distiller.
9 (2) "Person" means a natural person 21 years of age or older.
10 (b) Notwithstanding any other provision of this division, an
11 authorized licensee may compensate a person with ownership
12 interest in a retail license for promotional or marketing services
13 of the authorized licensee's products, subject to the following
14 conditions:
15 (1) Any compensation agreement with the person shall be in
16 the form of a written contract and include the conditions outlined
17 in this section.
18 (2) The person shall not be directly or indirectly involved in the
19 retailer's purchasing decisions of the brands of alcoholic beverages
20 owned by the authorized licensee compensating the person.
21 (3) The authorized licensee compensating the person shall not
22 utilize the person to conduct promotional and marketing activities
23 to promote or market alcoholic beverages on the premises of the
24 retailer in which the person has an ownership interest.
25 (4) All compensation the authorized licensee pays to the person
26 shall be based solely on the person's promotional and marketing
27 activities and shall not be related directly or indirectly to the sale
28 of alcoholic beverages by the retailer in which the person has an
29 ownership interest.
30 (5) The name, image, and brand of the retailer in which the
31 person has an ownership interest shall not be featured or referenced
32 in any way in any advertising of brands sold by the authorized
33 licensee compensating the person.
34 (6) The person shall not be involved in the decisions by the
35 authorized license regarding the selection of retailers that will offer

1 for sale the brands the person is compensated to promote and
2 market.

3 (c) A licensee that is not an authorized license shall not shall
4 not compensate a person under this section and shall not directly
5 or indirectly underwrite, share in, or contribute to the costs of
6 compensation authorized by this section.

7 (d) Any officer, director, or agent of an authorized licensee that
8 is compensated by that authorized licensee for promotional or
9 marketing services of the authorized licensee's products shall not
10 be subject to the conditions of subdivision (b), notwithstanding
11 the fact that the authorized licensee, or any officer, director, or
12 agent of that authorized licensee, holds an ownership interest in a
13 retail license.

14 (e) (1) An authorized licensee who, through coercion or other
15 illegal means, induces, directly or indirectly, a holder of a
16 wholesaler's license to provide compensation to a person pursuant
17 to this section shall be guilty of a misdemeanor and shall be
18 punished by imprisonment in the county jail not exceeding six
19 months, or by a fine in an amount of ten thousand dollars
20 (\$10,000), or by both imprisonment and fine.

21 (2) An authorized licensee or person who violates any provision
22 of this section shall be guilty of a misdemeanor and shall be
23 punished by imprisonment in the county jail not exceeding six
24 months, or by a fine in the amount of ten thousand dollars
25 (\$10,000), or by both imprisonment and fine.

26 (f) Nothing in this section shall limit the activities authorized
27 under Section 25503.1.

28 (g) The Legislature finds and declares both of the following:

29 (1) That it is necessary and proper to require a separation
30 between manufacturing interests, wholesale interests, and retail
31 interests in the production and distribution of alcoholic beverages
32 in order to prevent suppliers from dominating local markets through
33 vertical integration and to prevent excessive sales of alcoholic
34 beverages produced by overly aggressive marketing techniques.

35 (2) Any exception established by the Legislature to the general
36 prohibition against tied interests must be limited to the express
37 terms of the exception so as to not undermine the general
38 prohibitions.

39 (h) This section will remain in effect only until January 1, 2022,
40 and as of that date is repealed.

1 SEC. 2. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

O